IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7629 OF 2006

Shri Ramnath Lahu Tare & Ors. ..Petitioners

Vs.

Jaywant Govind Tare & Ors. ..Respondents

Mr.P.K.Dhakephalkar i/b Amol P.Mhatre for the petitioners

CORAM : A.P.DESHPANDE, J

DATED : 22ND NOVEMBER, 2006

P.C.:

1. The learned counsel for the petitioners invite my attention to the prayer made in the suit and points out that the plaintiffs are objecting to an encroachment allegedly made by the present petitioners (defendant nos.1 and 2) by asserting that the defendants have already started illegal construction. In his submission, if the averments of the plaint are properly read, the petitioners need to be held to be in possession of the property. He further points out that even mandatory injunction is prayed for.

2. In view of the pleadings, in the submission of the learned counsel for the petitioners, a concurrent finding of fact by both the courts below about the plaintiffs being in possession is not sustainable.

3. Perused the orders passed by the courts below. From the various documents placed by the rival parties on the records of the courts below and relying on the revenue entries, a possible view is taken by the courts below that the defendant nos.1 and 2 are in possession of the property and so concluding, prima facie, temporary injunction has been granted. Suit is of the year 2005 and temporary injunction is operating against the present petitioners since for quite some time.

4. In my opinion, the ends of justice would be met if the trial court decides the suit expeditiously. In the result, though I reject the writ petition summarily, I hope and trust that the trial court will proceed to decide the suit as expeditiously as possible. I expect a decision of the main suit within 6 months from today.

5. It is made clear that the observations made by the trial court and the first appellate court for granting temporary injunction are prima facie in nature and would not weigh with the trial court while deciding the suit on merits.

(SHRI A.P.DESHPANDE, J)